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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,953	12/11/2001	Lubert Stryer	AFFYP002C1	4009
26541	7590	03/25/2005	EXAMINER	
RITTER, LANG & KAPLAN 12930 SARATOGA AE. SUITE D1 SARATOGA, CA 95070			DEJONG, ERIC S	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20050310

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

See the attached Office communication concerning BOTH the amendment filed by applicant on 23 November 2004 and the response to the restriction/election requirement filed by applicant on 6 December 2004.

## Office Communication

### ***Regarding 23 November 2004 Amendment***

The amendment to the claims filed on 23 November 2004 does not comply with the requirements of 37 CFR 1.121(c) because claims 10-29, as included with the originally filed application on 11 December 2001, are omitted in the amended set of claims and there is no indication of claims 10-29 being canceled in any amendment submitted by applicant. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1-5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being

placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) *When claim text in clean version is required.* The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) *When claim text shall not be presented; canceling a claim.*

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) *Reinstatement of previously canceled claim.* A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

Since the reply filed on 23 November 2004 appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH** or **THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to submit an amendment in compliance with 37 CFR 1.121 in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

***Regarding 6 December 2004 Restriction/Election Response***

The reply filed on 6 December 2004 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

The reply did not contain an explicit election of a single disclosed specie for each of the three Specie Election Requirements as required under 35 U.S.C. 121. The species that applicant must elect from are reiterated below from the original restriction/election requirement filed on 30 September 2004.

**FIRST SPECIE ELECTION REQUIREMENT**

Specie A: claim embodiments which contain the following hybridization methodology practice: a method and computer program product directed to sequencing a nucleic acid sequence wherein hybridization intensities are input from probes hybridizing under conditions that do not allow identification of all nucleic acid probes that are perfectly complementary to part of the nucleic acid sequence.

Specie B: claim embodiments which do NOT contain the above methodology practice.

**SECOND SPECIE ELECTION REQUIREMENT**

Specie C: claim embodiments which contain the following hybridization methodology practice: a method and computer program product directed to sequencing a nucleic acid sequence wherein hybridization intensities are input from probes with the highest number of single base mismatch neighbors.

Specie D: claim embodiments which do NOT contain the above methodology practice.

### **THIRD SPECIE ELECTION REQUIREMENT**

Specie E: claim embodiments which contain the following hybridization methodology practice: a method and computer program product directed to sequencing a nucleic acid sequence wherein hybridization intensities are input from probes that have fewer than a predetermined number of base mismatches with another probe.

Specie F: claim embodiments which do NOT contain the above methodology practice.

Applicant is advised that a reply to the previous filed specie election requirement must include an identification of the species that is elected consonant with these requirement (emphasis added), and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Applicant is advised that the reply to this requirement to be complete must include and election of the invention to be examined even though the requirement be traversed (37 CFR 1.143). (emphasis added)

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. DeJong whose telephone number is (571) 272-6099. The examiner can normally be reached on 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, Ph.D. can be reached on (571) 272-0718. The fax phone

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number for the organization where this application or proceeding is assigned is (571) 272-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EDJ *EDJ*

*Ardin H. Marschel 3/17/05*  
**ARDIN H. MARSCHEL**  
**SUPERVISORY PATENT EXAMINER**